REMARKS

Claims 1-5, 8-14 and 18 were in the application prior to the present response. Claims 8-14 and 18 have been cancelled by the present response. New Claims 19 and 20 have been added.

No Claim stands allowed.

New Claims 19 and 20 are dependent from Claim 1.

Claims 1-5, 8-14 and 18 stand rejected under 15 USC 102(b) as being anticipated by U.S. patent No. 5,875,958 to Weiteder et al. ('958 patent" or "Wieteder et al").

> "When the defense of lack of novelty is based on a printed publication that is asserted to describe the same invention, a finding of anticipation requires that the publication describe all of the elements of the claims, arranged as in the patented device"
>
> *C.R. Bard Inc. v M3 Systems, Inc.* 48 USPQ2d 1225,1230

Citing: *Shearing v. Iolab Corp.* 24 USPQ2d 1133 (Fed. Cir. 1992); *Richardson v. Suzuki Motor Co.* 9 USPQ2d 1913 (Fed Cir. 1989); *Perkin-Elmer Corp. v. Computervision Corp*; 2211 USPQ 673 (Fed. Cir. 1984.

It is respectfully submitted that the invention defined in Claims 1-5, 8-14 and 18 are not anticipated by the '958 patent.

Attention is invited to the side-by-side comparison of Applicant's Claim 1 and the disclosure of the '958 patent set forth below.

Claim 1 of Present Application	Disclosure of Weiteder '958 Patent
A fitment for a container having a top end and a first wall associated with the top end comprising	fitment for a container = Yes top end of container =Yes first wall associated with the top end of the container = Yes
means defining an opening through the first wall associated with the top end of the container,	No, only at the time of use, a user pulls of the pull ring to tear an opening in the top of the container
a circumferential flange member,	Yes
a second wall circumscribing said opening through the first wall associated with the top end of the container,	No second wall; no opening in wall of top end
said second wall upstanding from said flange member,	No, there is no second wall "upstanding from said flange member"
said second wall defining a conduit having entrance and exit ends through which contents of the container may be discharged,	No, flange defines conduit
at least said exit end of said conduit having a substantially ellipsoidal planar cross-sectional geometry having at least one major portion and at least one minor portion,	Yes
Said minor portion being disposed vertically above	Yes

said major portion when said fitment is affixed to the first wall of the container and the container is oriented in a direction for discharge of the contents of the container through said opening and substantially simultaneous ingress of ambient air into the container through said minor portion of said fitment,	
a tear away membrane disposed across and closing said conduit and including pull ring means affixed to said tear away membrane at a location within said minor portion of said cross-section geometry of said conduit thereby providing for localization of an initial tear away force applied through said pull ring.	No, First, there is no membrane, Second, pull ring tears away a portion of the top end of the container, not a "membrane at a location within said minor portion of said cross-section geometry of said conduit".

From the foregoing comparison, it is noted that the '958 patent fails to disclose multiple elements of Applicant's Claim 1. Specifically, the '958 patent fails to disclose an opening in the wall of the top end of the container. Rather, in the '958 patent an opening through the wall of the top end the container is created by the und user employing the pull ring to tear away a portion of the wall of the top end of the container. Further, the '958 patent fails to disclose a "second wall circumscribing said opening through the first wall associated with the top end of the container."

As distinguished from the '958 patent, Applicant's claimed fitment employs a flange to affix the fitment in circumscribing relationship to an existing opening in the top end wall of the container, and there is further provided a second wall upstanding from such flange and defining a conduit through which the contents of the package may be discharged. The '958 patent discloses a flange which is anchored to the top end wall of the container, such flange defining the bounds of a "to be formed" opening through which the contents of the container may be discharged from the container. There is no "second wall" disclosed in the '958 patent. For this reason alone, the '958 patent fails to anticipate the invention set forth in Applicant's Claim 1.

Still further, however, the '958 patent fails to disclose a tear away membrane. Rather, the '958 patent discloses a pull ring which is anchored to a portion of the top end wall itself so that pulling on the pull ring physically tears a hole in the top end wall of the container. Applicant's Claim 1 calls for a tear away membrane in the conduit itself.

In view of the foregoing, it is respectfully that the rejection of Claim 1 as being anticipated by the '958 patent be withdrawn.

Claims 2-5 and new Claims 19 and 20 are dependent from Claim 1 and inherit each and every element of their parent claim plus any intervening claims. Accordingly, allowance of Claims 2-5 is respectfully requested for the same reasons, among others, set forth hereinabove in discussing the allowability of Claim 1.

In view of the facts that the fitment of the '958 patent is affixed to the outer surface of the top end of the container, **without first defining an opening through the**

top end wall, and in the '958 patent, actuation of the pull ring tears an opening in the top end of the '958 patent container, new Claims 19 and 20 have been added in which the invention is defined in part by the location of the circumferential flange of the fitment, namely internally of the container, and with the upstanding second wall associated with the circumferential flange of the present invention projecting through this "preformed" opening in the wall of the top end of the container. In this respect, it is noted that the container of the '948 patent is of the "sterile" type, meaning that the container is initially sterilized, then filled with product, then sealed, all within a sterile environment. Contariwise, in applicant's invention, an opening is defined through the top wall of the container before the container is filled with contents. This aspect of the present invention requires that the conduit be closed by a tearable membrane which is removable via the pull ring.

Claims 8- 18 have been cancelled, either by earlier amendment(s) or by the present response.

Reconsideration of the application and allowance of Claims 1-5, as amended and new Claims 19 and 20 are respectfully requested.

Respectfully submitted,

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